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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/633,450

07/31/2003

Robert D. Harty

0116/00921

4683

27197

7590

03/26/2007

CHERSKOV & FLAYNIK
THE CIVIC OPERA BUILDING
20 NORTH WACKER DRIVE, SUITE 1447
CHICAGO, IL 60606

EXAMINER

LEWIS, KIM M

ART UNIT

PAPER NUMBER

3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/633,450

Applicant(s)

HARTY, ROBERT D.

Examiner

Kim M. Lewis

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1,4,5,7,10,11 and 15 is/are rejected.
- 7) ☒ Claim(s) 2,3,6,8,9,12-14, 16,17 and 18 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Detailed Action.

DETAILED ACTION

Claim Objections

1. Claims 11 and 19 are objected to because of the following informalities:

Claim 11, line 1, "extends" should read --adapted to extend--,

Claim 19, line 3, "extends" should read --adapted to extend--;

Claim 19, line 5, "extending" should read --adapted to extend--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4 and 10-11, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,054,475 ("Calabrese et al.").

As regards claim 1, Calabrese et al. disclose a medical collar that anticipates applicant's invention. The collar immobilizes the head, neck and upper torso of a patient, and as can be seen from marked-up Fig. 1, comprises a first substrate for supporting the back of the patient's head; a second substrate in communication with the first substrate, whereby the second substrate is adapted to encircle the patient's neck;

and a third substrate in communication with the second substrate, whereby the third substrate contacts the patient's chest.

As regards claim 4, note apertures adjacent member (22) as shown in Fig. 3.

As regards claims 10-11, the patient's ears, as seen in Fig. 4 are capable of being visualized during use of the collar and the third substrate is capable of extending at least as low as the patient's second rib.

As regards claim 15, note padding material (18).

3. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,205,813 ("Schmidt").

As regard claim 1, Schmidt discloses a support device that immobilizes the head, neck and upper torso of a patient, and as can be seen from marked-up Figs. 24 and 25, comprises a first substrate for supporting the back of the patient's head; a second substrate in communication with the first substrate, whereby the second substrate is adapted to encircle the patient's neck; and a third substrate in communication with the second substrate, whereby the third substrate contacts the patient's chest.

As regards claim 5, the device of Schmidt is integrally molded.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt.

As regards claim 7, Schmidt fails to teach a transparent device. However, it has been held that the selection of a known material based upon its suitability for the intended use is a design consideration. Thus, it would have been obvious to one having ordinary skill in the art to select a moldable transparent material depending upon the intended use.

Allowable Subject Matter

7. Claims 2, 3, 6, 8, 9, 12-14 and 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 19-20 are allowed.

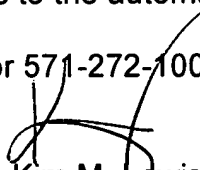
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-

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4796. The examiner can normally be reached on Monday to Friday, from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

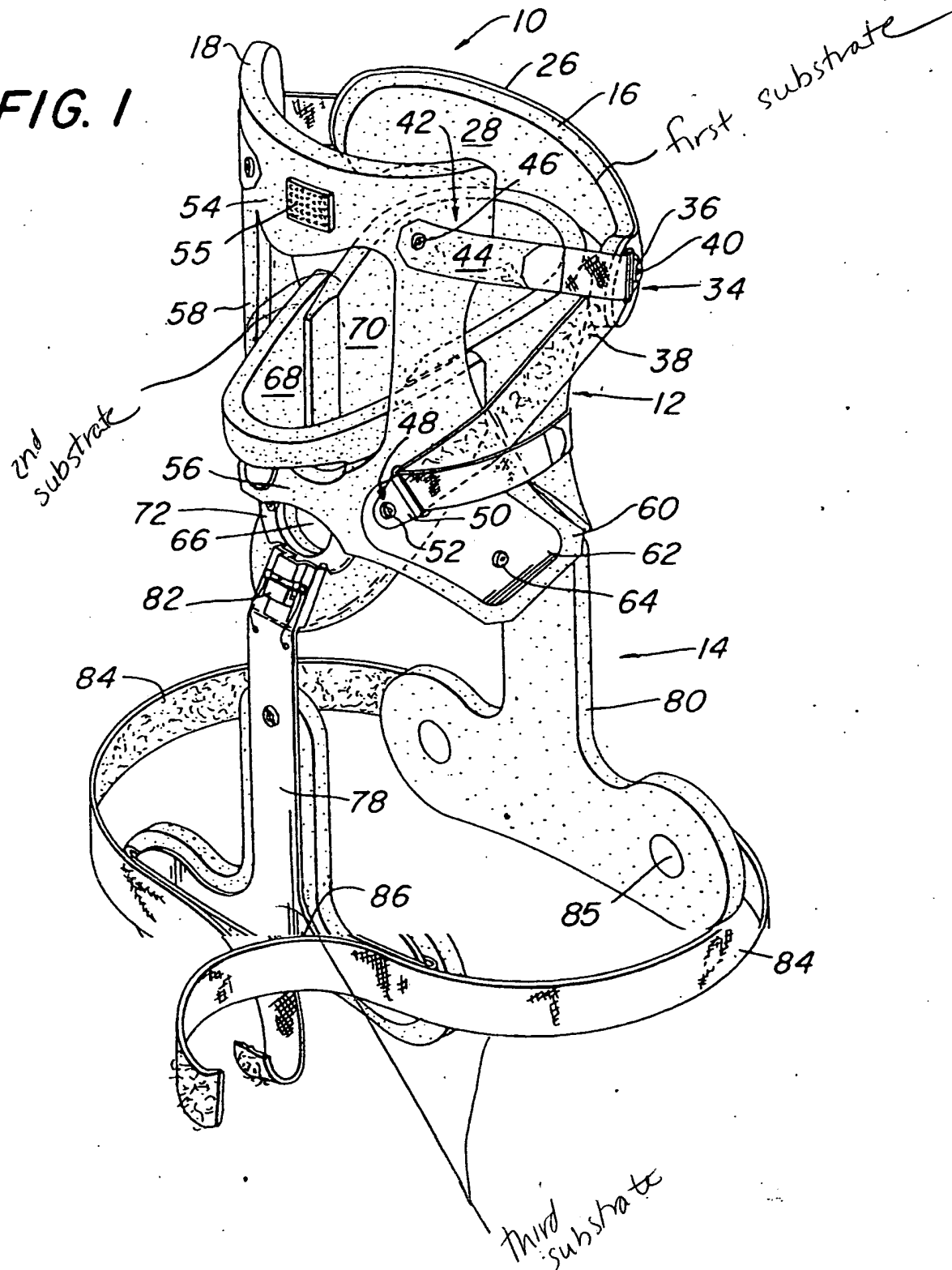
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kim M. Lewis
Primary Examiner
Art Unit 3772

kml
March 19, 2007

FIG. 1



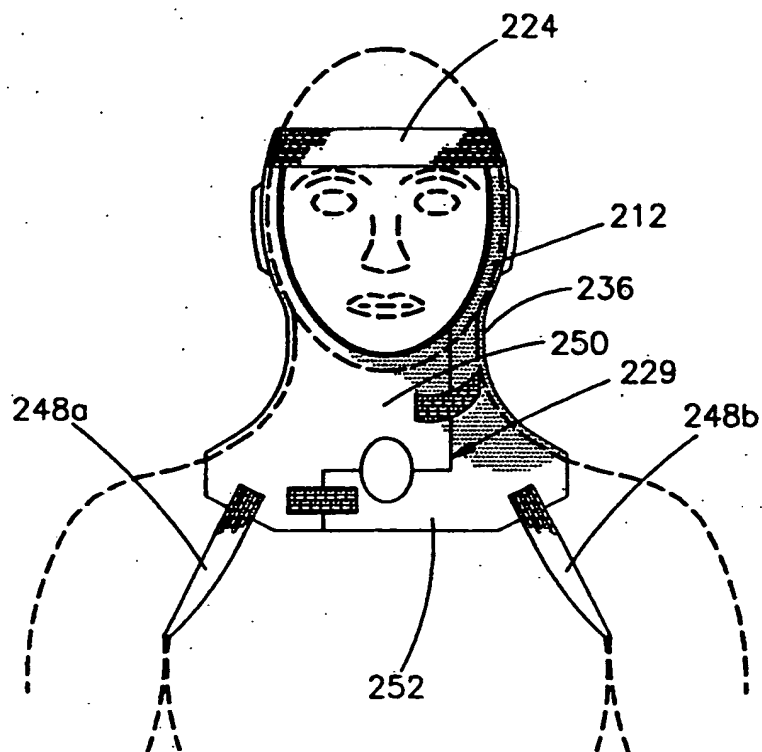


FIG. 24

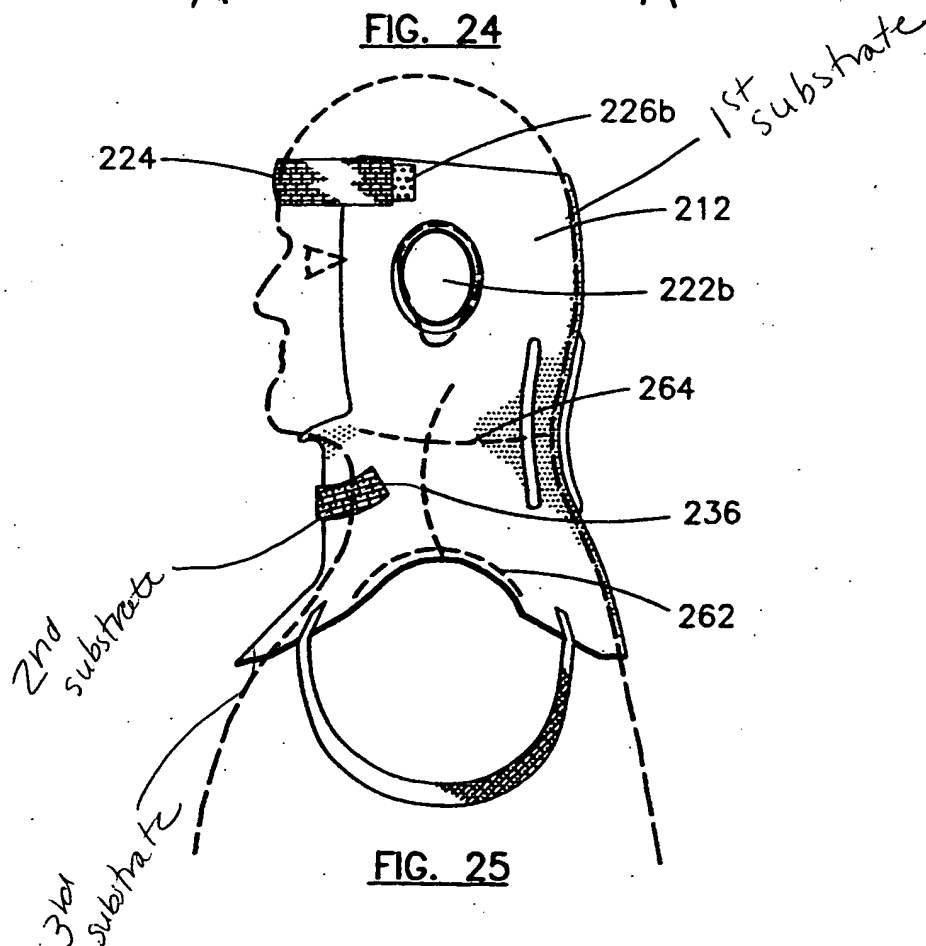


FIG. 25